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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 MINGBO CAI, Individually and On Behalf
13 of All Others Similarly Situated,

14 Plaintiff,

15 vs.

16 SWITCH, INC., ROB ROY, GABE
17 NACHT, ZAREH SARAFIAN,
18 DONALD SNYDER, TOM THOMAS,
19 BRYAN WOLF, GOLDMAN SACHS &
20 CO. LLC, J.P. MORGAN SECURITIES
21 LLC, BMO CAPITAL MARKETS CORP.,
22 WELLS FARGO SECURITIES, LLC,
23 CITIGROUP GLOBAL MARKETS INC.,
24 CREDIT SUISSE SECURITIES,
25 JEFFERIES LLC, BTIG, LLC,
26 RAYMOND JAMES & ASSOCIATES,
27 INC., STIFEL, NICOLAUS & COMPANY,
28 INC. and WILLIAM BLAIR &
COMPANY, L.L.C.,

Defendants

Case No. 2:18-cv-01471-JCM-VCF

**AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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1 Lead Plaintiff Oscar Farach (“Plaintiff”), by and through his attorneys, alleges the
2 following upon information and belief, except as to those allegations concerning Plaintiff, which
3 are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among
4 other things, his counsel’s investigation, which includes without limitation: (a) review and
5 analysis of regulatory filings made by Switch, Inc. (“Switch “ or the “Company”), with the United
6 States Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases
7 and media reports issued by and disseminated by Switch; (c) review and analysis of analyst reports
8 regarding the Company; (d) interviews with former Switch employees; and (e) review of other
9 publicly available information concerning Switch, including transcripts of Switch’s investor calls.
10 Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein
11 after a reasonable opportunity for discovery.
12

13 **I. NATURE OF THE ACTION**

14 1. This is a federal securities class action on behalf of all individuals and entities that
15 purchased or acquired Switch Class A common stock pursuant and/or traceable to the Company’s
16 false and misleading registration statement and prospectus (collectively, the “Registration
17 Statement”), issued in connection with the Company’s initial public offering (the “IPO”) on or
18 about October 6, 2017, seeking remedies under Sections 11 and 15 of the Securities Act of 1933
19 (the “Securities Act”).
20

21 2. Switch, which was founded in 2000, is a technology infrastructure ecosystem
22 corporation whose core business purportedly is the design, construction and operation of advanced
23 data centers.
24

25 3. The claims in this action arise from the materially false and/or misleading
26 Registration Statement issued in connection with the IPO. In the IPO, the Company ultimately
27 sold 35,937,500 shares of Class A common stock at a price of \$17.00 per share. According to the
28

1 Company, Switch received \$577.3 million in proceeds, net of underwriting discounts and
2 commissions, but before offering expenses of \$4.1 million, in the IPO.

3 4. As detailed below, the Registration Statement contained materially false and
4 misleading statements and omitted material information in violation of Sections 11 and 15 of the
5 Securities Act.

6 5. As a result of Defendants securities law violations, Plaintiff and the Class have
7 suffered significant losses and damages. While the Company sold its Class A common stock for
8 \$17.00 per share in the IPO, the current price of its stock is approximately \$9 per share, a decline
9 of over 47%.

11 **II. JURISDICTION AND VENUE**

12 6. The claims asserted herein arise under Sections 11 and 15 of the Securities Act (15
13 U.S.C. §§ 77k & 77o).

14 7. This Court has jurisdiction over the subject matter of this action pursuant to 28
15 U.S.C. § 1331 and Section 22 of the Securities Act (15 U.S.C. § 77v).

16 8. Venue is proper in this District pursuant to § 22 of the Securities Act (15 U.S.C. §
17 77v) and 28 U.S.C. § 1391(b) as the Company conducts business in this District and maintains its
18 principal executive offices in this District.

19 9. In connection with the acts, transactions, and conduct alleged herein, Defendants
20 directly and indirectly used the means and instrumentalities of interstate commerce, including the
21 United States mail, interstate telephone communications, and the facilities of a national securities
22 exchange.

23 **III. PARTIES**

24 **A. Lead Plaintiff**

25 10. Lead Plaintiff Oscar Farach, as set forth in his previously-filed certification (Dkt.
26 No. 15-2), incorporated by reference herein, purchased or acquired Switch common stock pursuant
27
28

1 or traceable to the Company's Registration Statement issued in connection with the Company's
2 IPO, and was damaged thereby.

3 **B. Corporate Defendant**

4 11. Defendant Switch is incorporated in Nevada, and its principal executive offices are
5 located at 7135 S. Decatur Boulevard Las Vegas, NV 89118. Switch's stock trades under the
6 ticker symbol "SWCH" on the New York Stock Exchange (the "NYSE"), which is an efficient
7 market. During the Class Period, Switch, through its officers and directors, published periodic
8 filings with the SEC, including its Registration Statement, and made public statements that, as
9 alleged herein, contained material misrepresentations and omissions that artificially inflated the
10 price of the Company's securities.

12 **C. Officer Defendants**

13 12. Defendant Rob Roy ("Roy") was, at all relevant times, the Chief Executive Officer
14 ("CEO") and Chairman of the Board of Directors of Switch, Inc., including at the time of the IPO
15 and throughout the Class Period. Defendant Roy has served as CEO and as Chairman of the
16 Board of Managers of Switch, Ltd., which was Switch's primary operating subsidiary. Defendant
17 Roy first began developing data center facilities in 2000, merging several predecessor companies
18 into Switch, Ltd. after its formation. Defendant Roy was the founder of Switch. Defendant Roy
19 also signed, or authorized the signing of, the Registration Statement issued in connection with the
20 IPO.
21

22 13. Defendant Gabe Nacht ("Nacht") was, at all relevant times, the Chief Financial
23 Officer ("CFO") of Switch, Inc., including at the time of the IPO and throughout the Class Period.
24 Defendant Nacht has served as CFO of Switch, Ltd. since January 2016. Prior to joining Switch,
25 Ltd., Nacht served as CFO of ClearCapital.com, Inc., a real estate valuations, data analytics, and
26 technology company, from September 2011 to July 2015. According to the Company, Defendant
27 Nacht has over 25 years of corporate finance experience and has served as CFO for several
28

1 technology and media companies. Defendant Nacht holds an MBA in Corporate Finance from the
2 D'Amore-McKim School of Business at Northeastern University and a B.A. in Political Science
3 from Tufts University. Defendant Nacht also signed, or authorized the signing of, the Registration
4 Statement issued in connection with the IPO.

5
6 14. Defendants Roy and Nacht are collectively referred to hereinafter as the "Officer
7 Defendants." The Officer Defendants, because of their positions with the Company, possessed the
8 power and authority to control the contents of Switch's reports to the SEC, press releases and
9 presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*,
10 the market. Each Officer Defendant, during their tenure, was provided with copies of the
11 Company's reports alleged herein to be misleading prior to, or shortly after, their issuance and had
12 the ability and opportunity to prevent their issuance or cause them to be corrected.

13
14 **D. Director Defendants**

15 15. Defendant Donald Snyder ("Snyder") was, at all relevant times, a member of the
16 Board of Directors of Switch. Defendant Snyder has also served as a member of the Board of
17 Managers of Switch, Ltd. since 2006. According to the Company, Defendant Snyder's
18 professional career began with 22 years at First Interstate Bancorp (now Wells Fargo), culminating
19 as Chairman and Chief Executive Officer of the bank's affiliate in Nevada. Defendant Snyder
20 then moved to the casino hospitality industry, becoming a director and the president of Boyd
21 Gaming Corporation from 1997 until his retirement in 2005. Following service from 2010 as
22 Dean of the Harrah College of Hotel Administration at the University of Nevada, Las Vegas
23 ("UNLV"), Defendant Snyder served as Acting President of UNLV in 2014. Since January 2015,
24 he has served as Presidential Advisor at UNLV. Defendant Snyder serves as a director, chair of the
25 Governance Committee, and member of the Risk Committee of Western Alliance Bancorporation,
26 a publicly held commercial bank holding company, and as a director, chair of the Compensation
27
28

1 Committee, and member of the Corporate Governance Committee of Tutor Perini Corporation, a
2 publicly held construction company. He has served as a director on several public and private
3 company boards, numerous non-profit entities, and several state and local public sector
4 commissions and committees over the past 25 years. His current non-corporate service includes
5 the Smith Center for the Performing Arts (Chairman), the Nathan Adelson Hospice (past
6 Chairman), UNLV Foundation (past Chairman), Clark County School District's Oversight Panel
7 for School Facilities (Chairman), and the Regional Transportation Commission's Transportation
8 Resource Advisory Committee (Chairman). Defendant Snyder holds a Bachelor of Science in
9 Business Administration from the University of Wyoming and completed the Graduate School of
10 Credit & Financial Management at Stanford University. Defendant Snyder also signed, or
11 authorized the signing of, the Registration Statement issued in connection with the IPO.
12

13
14 16. Defendant Tom Thomas ("Thomas") was, at all relevant times, a member of the
15 Board of Directors of Switch. Defendant Thomas has also served as a member of the Board of
16 Managers of Switch, Ltd. since 2004. Defendant Thomas held various executive positions with
17 Valley Bank of Nevada until its merger with Bank of America in 1992. After the merger, he
18 became managing partner of Thomas & Mack Co., an investment management and commercial
19 real estate development company with properties and developments in Nevada, California,
20 Arizona and Utah. He also serves as a director of Southwest Gas Holdings, Inc., a publicly held
21 energy and construction company, where he is a member of the Nominating and Corporate
22 Governance Committee. Defendant Thomas is a member of the Nevada Bar Association and was
23 instrumental in establishing the Thomas & Mack Legal Clinic and Moot Court Facility at the
24 UNLV Boyd School of Law. He holds a degree in Finance and a J.D. from the University of
25 Utah. Defendant Thomas also signed, or authorized the signing of, the Registration Statement
26 issued in connection with the IPO.
27
28

1 17. Defendant Bryan Wolf (“Wolf”) was, at all relevant times, a member of the Board
2 of Directors of Switch. Defendant Wolf has also served as a member of the Board of Managers of
3 Switch, Ltd. since January 2004. Since 1997, Defendant Wolf has served in various roles at Intel
4 Capital, and has served as Managing Director, Data Center and Cloud Infrastructure since 2007.
5 Beginning in March 2014, Mr. Wolf has also served as Vice President of Intel Corporation.
6 Defendant Wolf holds a Bachelor of Science degree in Political Science from the University of
7 Oregon and an MBA from the University of Pennsylvania’s Wharton School. Defendant Wolf
8 also signed, or authorized the signing of, the Registration Statement issued in connection with the
9 IPO.
10

11 18. Defendant Zareh Sarrafian (“Sarrafian”) was, at all relevant times, a member of the
12 Board of Directors of Switch. Defendant Sarrafian has also served as a member of the Board of
13 Managers of Switch, Ltd. since January 2017. He has served as the CEO of Riverside University
14 Health System since May 2014. Prior to that, Mr. Sarrafian served as Chief Administrative
15 Officer at Loma Linda Medical Center in Loma Linda, California from 1998 to 2014. He also
16 serves as a director and member of the Nominating and Corporate Governance Committee of
17 Pacific Premier Bancorp, Inc., or Pacific Premier, a publicly held commercial bank holding
18 company, and as a member of the board of directors of Pacific Premier’s banking subsidiary,
19 Pacific Premier Bank. He previously served a director of Security California Bancorp and its
20 banking subsidiary Security Bank of California until they were acquired by Pacific Premier.
21 Defendant Sarrafian received his B.S. from California State Polytechnic University, Pomona, and
22 his M.B.A. from California State University, San Bernardino. Defendant Sarrafian also signed, or
23 authorized the signing of, the Registration Statement issued in connection with the IPO.
24
25

26 19. Defendants Snyder, Thomas, Wolf, and Sarrafian are collectively referred to
27 hereinafter as the “Director Defendants.”
28

E. Underwriter Defendants

20. Defendant Goldman, Sachs & Co. (“Goldman Sachs”) underwrote the Company’s IPO. Goldman Sachs also acted as a lead bookrunner and representative of the other underwriters and agreed to purchase 8,361,487 shares in the IPO, exclusive of its option to purchase additional shares.

21. Defendant J.P. Morgan Securities LLC (“J.P. Morgan”) underwrote the Company’s IPO. J.P. Morgan also acted as a lead bookrunner and a representative of the other underwriters and agreed to purchase 8,361,487 shares in the IPO, exclusive of its option to purchase additional shares.

22. Defendant BMO Capital Markets Corp. (“BMO”) underwrote the Company’s IPO. BMO also acted as a lead bookrunner and a representative of the other underwriters and agreed to purchase 4,013,513 shares in the IPO, exclusive of its option to purchase additional shares.

23. Defendant Wells Fargo Securities, LLC (“Wells Fargo”) underwrote the Company’s IPO. Wells Fargo also acted as a lead bookrunner and a representative of the other underwriters and agreed to purchase 4,013,513 shares in the IPO, exclusive of its option to purchase additional shares.

24. Defendant Citigroup Global Markets Inc. (“Citigroup”) underwrote the Company’s IPO. Citigroup also agreed to purchase 1,750,000 shares in the IPO, exclusive of its option to purchase additional shares.

25. Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) underwrote the Company’s IPO. Credit Suisse also agreed to purchase 1,750,000 shares in the IPO, exclusive of its option to purchase additional shares.

1 26. Defendant Jefferies LLC (“Jefferies”) underwrote the Company’s IPO. Jefferies
2 also agreed to purchase 1,000,000 shares in the IPO, exclusive of its option to purchase additional
3 shares.

4 27. Defendant BTIG, LLC (“BTIG”) underwrote the Company’s IPO. BTIG also
5 agreed to purchase 500,000 shares in the IPO, exclusive of its option to purchase additional shares.
6

7 28. Defendant Raymond James & Associates, Inc. (“Raymond James”) underwrote the
8 Company’s IPO. Raymond James also agreed to purchase 500,000 shares in the IPO, exclusive of
9 its option to purchase additional shares.

10 29. Defendant Stifel, Nicolaus & Company, Inc. (“Stifel”) underwrote the Company’s
11 IPO. Stifel also agreed to purchase 500,000 shares in the IPO, exclusive of its option to purchase
12 additional shares.

13 30. Defendant William Blair & Company, L.L.C. (“William Blair”) underwrote the
14 Company’s IPO. William Blair also agreed to purchase 500,000 shares in the IPO, exclusive of its
15 option to purchase additional shares.
16

17 31. Defendants Goldman Sachs, J.P. Morgan, BMO, Wells Fargo, Citigroup, Credit
18 Suisse, Jefferies, BTIG, Raymond James, Stifel, and William Blair are referred to hereinafter as
19 the “Underwriter Defendants”
20

21 **IV. STATEMENT OF RELEVANT FACTS**

22 **A. Background**

23 32. Switch is a data center hosting company based in Nevada. It develops and operates
24 data center facilities through which it provides colocation, telecommunications, cloud services,
25 and content ecosystems for its customers. Switch’s primary business segments are colocation,
26 connectivity, and professional services.

27 33. Colocation customers house certain information technology infrastructure
28 equipment—e.g., servers and storage hardware—at Switch’s colocation data centers to avoid the

1 cost of establishing and maintaining their own facilities. Switch, in turn, leases space to customers
2 and manages the facility, providing services such as power, temperature control, and security. The
3 majority of Switch's revenue (81.4% of total revenue in FY2016) comes from its colocation
4 segment.

5
6 34. In October 2017, at the time of its IPO, Switch operated ten data center facilities at
7 three campuses, two in Nevada (Las Vegas and Tahoe/Reno) and one in Grand Rapids, Michigan.
8 Switch was also developing an Atlanta campus scheduled to open in 2018.

9 35. Switch refers to its campuses collectively as "Primes" and individually as follows:
10 Las Vegas is "the Core"; Tahoe/Reno is "the Citadel"; Grand Rapids is "the Pyramid"; and
11 Atlanta is "the Keep."

12 36. Together, Switch's ten operating colocation facilities comprise four million gross
13 square feet of space. Over 49% of the space is in Las Vegas while Tahoe/Reno accounts for 36%,
14 and Grand Rapids for 16%.

15
16 37. Switch touts various characteristics that purportedly distinguish it from
17 competitors, including: (1) its intellectual property; (2) the locations of its facilities (in low-tax
18 areas that are not susceptible to natural disasters and that offer cheap renewable power); and (3) a
19 commitment to security.

20 **B. The Company Conducts Its IPO in October 2017**

21 38. Prior to the IPO, Switch, Ltd. was owned entirely by its members (including
22 Defendant Roy) and was the main operating entity for the Switch business. In the lead-up to the
23 IPO—on June 13, 2017—Switch, Inc. was incorporated to serve as the issuer of Class A common
24 stock and was to be the sole managing member of Switch, Ltd. following the IPO.

25
26 39. Switch filed the Registration Statement for its IPO on Form S-1 with the SEC on
27 September 8, 2017. The securities registered pursuant to the Registration Statement were Class A
28

1 common stock of Switch. The Registration Statement was signed “[p]ursuant to the requirements
2 of the Securities Act of 1933” by Defendants Roy, Nacht, Sarrafian, Snyder, Thomas and Wolf.¹

3 40. Subsequent to the filing of the Registration Statement, Switch filed an amendment
4 to the Registration Statement on Form S-1/A on September 25, 2017. The amendment forms part
5 of the Registration Statement² and is substantially similar to the Form S-1 filed on September 8,
6 2017 and was signed by the same Defendants “[p]ursuant to the requirements of the Securities Act
7 of 1933.”
8

9 41. On October 5, 2017, Switch announced the pricing of its IPO of 31,250,000 shares
10 of its Class A common stock at a public offering price of \$17.00 per share. The Company further
11 announced that the shares were expected to begin trading on the NYSE on October 6, 2017 and
12 that the Company had granted the underwriters a 30-day option to purchase up to an additional
13 4,687,500 shares of its Class A common stock from Switch at the initial public offering price, less
14 the underwriting discount and commissions.
15

16 42. Together with the Prospectus filed with the SEC on Form 424B4 on October 10,
17 2017, the Registration Statement offered for sale 31,250,000 (plus an additional 4,687,500 shares
18 of Class A common stock to the underwriters) at \$17.00 per share. Shares began trading on
19 October 6, 2017 on the NYSE under the ticker symbol “SWCH.”
20

21 43. On October 12, 2017, the Company announced the closing of its initial public
22 offering and further announced that the underwriters had executed their option to purchase an
23 additional 4,687,500 Switch shares.
24

25 ¹ Additionally, Larry Krause signed the Registration Statement. Mr. Krause passed away around
26 the time of the IPO and is not named as a party to this action.

27 ² As used herein, the term “Registration Statement” refers to, collectively, the Registration
28 Statement that was filed by the Company on September 8, 2017, all amendments thereto, and the
Prospectus filed on Form 424B4 on October 10, 2017, which was incorporated into and formed a
part of the Registration Statement that became effective on October 5, 2017.

1 44. In the IPO, the Company sold 35,937,500 shares of its Class A common stock,
 2 including 4,687,500 shares offered and sold pursuant to an option granted to the underwriters, at a
 3 public offering price of \$17.00 per share. Switch received \$577.3 million in proceeds, net of
 4 underwriting discounts and commissions, but before offering expenses of \$4.1 million, in the IPO.

5 **C. Defendant Roy Was Able to Maintain Complete Control Over the Company**
 6 **Even After the IPO**

7 45. The IPO was structured in a way that gave Defendant Roy complete control of
 8 Switch, Inc. Rather than establishing a tax-advantaged REIT³ (typical for Switch's peer
 9 companies), Defendants established Switch, Inc. as an umbrella partnership C-corporation—an
 10 ownership structure with Class A-C equity shares, super-voting rights and majority control by
 11 Roy, and a tax-receivable arrangement with its members. Thus, while investors in the IPO
 12 collectively share 100% of the economic interest in Switch, Inc., their Class A common stock
 13 yields only a 5.6% voting interest. Conversely, Defendant Roy's 42.9 million Class C shares,
 14 which have 10-1 voting rights, have no economic interest in Switch, Inc. but give Defendant Roy
 15 (and an affiliated entity of Defendant Roy) majority control with more than **67%** voting power
 16 over Switch.
 17

18 **D. The IPO Resulted in Financial Windfalls for Switch Executives**

19 46. Switch's executives were handsomely rewarded for the completion of the IPO. For
 20 example, Defendant Roy received more than 28 times the compensation in fiscal 2017, the year of
 21 the IPO, than in 2016. In 2016, Defendant Roy received approximately \$3.3 million in
 22 compensation while in 2017 he received a staggering \$94.6 million in compensation. Likewise,
 23 Thomas Morton, the Company's President, General Counsel and Secretary, received more than
 24 \$12 million in 2017 when he had only received \$1.9 million in compensation in 2016.
 25
 26

27 ³ A real estate investment trust, or REIT, is a company that owns, operates or finances income-
 28 producing real estate and pays a minimum of 90% percent of its taxable income in the form of
 shareholder dividends each year.

1 Additionally, following the IPO, Bloomberg valued Defendant Roy's 17.6% stake in the business
2 at \$875 million.

3 **E. Defendants Failed to Disclose in the Registration Statement That Their New**
4 **Sales Focus Could Lead to a Significant Risk of Lengthening Sales Cycles**

5 47. Defendants failed to disclose in the Registration Statement that, prior to the IPO,
6 the Company had implemented a new sales strategy that focused on selling hybrid cloud solutions
7 in a manner that presented a significant risk of lengthening the Company's sales cycles due to the
8 increased complication and necessary engineering needed for these more holistic contracts.

9 48. On August 13, 2018, Switch issued a press release entitled "Switch Announces
10 Second Quarter 2018 Financial Results," in which the Company lowered its revenue guidance for
11 the rest of the year. Therein, Defendant Roy, in relevant part, attributed this decrease in revenue
12 guidance to the introduction of a "holistic hybrid cloud solution," which was causing an increase
13 in sales timelines:
14

15 "Switch has introduced a one of a kind holistic hybrid cloud solution that for the
16 first time allows companies to move larger and more mission critical technology
17 environments to our differentiated cloud campus locations. After being introduced
18 to our new product enablement tools, enterprise companies are taking the time to
19 reimagine and reengineer their current use of software, hardware and connectivity
20 as they get ready to embrace the hybrid cloud for their primary mission critical
21 deployments.... Due to this new holistic approach to hybrid cloud solutions, the
22 closing cycles on these projects have extended the sales timelines."

23 49. On the same day, August 13, 2018, the Company held a conference call to discuss
24 its Q2 2018 results. On the call, Erin Thomas Morton, the Company's President, General Counsel
25 & Secretary, announced⁴ that:

26 After going public in the end of 2017, the business vision for Switch in 2018 has
27 been to focus on strategic enterprise deals that leverage the unique capabilities of
28 our PRIME data centers and thereby create a more valuable hybrid cloud
technology infrastructure ecosystem for our customers and to secure a path of
sustainable and profitable long-term growth for Switch.

⁴ To the chagrin of analysts and investors, Defendant Roy has never participated in an investor earnings call even though he is the CEO and controlling shareholder of Switch.

1 Today, we are in the process of adding to our business plan by launching the
 2 Switch ENTERPRISE ELITE HYBRID CLOUD program. This service advises our
 3 clients on 4 future needs pathways to bring about the full enterprise adoption of the
 4 cloud, which has been lagging behind in industry projections. We believe that
 5 Switch's holistic hyperscale ecosystem approach is unique because it involves a
 6 deep dive into a client's needs for: one, elite data center ecosystems; two, enterprise
 connectivity solutions; three, new software-defined tools and services; and four, a
 reimagination of enterprise data center equipment.

7 50. While Switch executives were announcing this purportedly new business plan for
 8 the Company and claiming that the new focus on selling Switch's hybrid cloud solutions to
 9 customers was leading to a lengthening of its sales cycles, analysts were surprised by this
 10 revelation and the fact that it had impacted the Company's guidance.⁵ An analyst at Cowen and
 11 Company, LLC, specifically noted on the earnings call that "the enterprise hybrid cloud strategy,
 12 it's the first time I'm hearing about it... [a]nd you're citing that as the explanation for why you've
 13 reduced your guidance." He also asked, "But if I go back to your planning period, which I assume
 14 was in October, November, December of last year, sometime in that period, were you assuming
 15 that this was going to happen and it's just happening now later than anticipated?"

17 51. In response, Defendant Nacht admitted that, since prior to the IPO, the Company's
 18 focus was the hybrid cloud environment and selling hybrid cloud services to their customers :

19 Well, first of all, Colby, thank you for that. Since our IPO roadshow, we've talked
 20 about where we thought compute was going and where we thought the hybrid cloud
 21 environment would go, and our focus was on the enterprise and helping them jump
 22 start that enterprise migration out of the enterprise-only data centers into a cloud
 23 environment. We've talked a lot about the fact that we're building the PRIME
 24 campuses for companies' PRIME deployments, their most regulated datasets, their
 25 most proprietary datasets, their most high-density datasets. And we fully expect that
 those enterprises will use the cloud or a significant portion of their compute, and
 they'll also need an edge deployment. We think that's where compute is going.
 We've been talking about that very consistently since the IPO road show, frankly.

26
 27 ⁵ Just the quarter before, the Company had missed consensus estimates as a result of customers
 28 delays related to certain larger-footprint deals that took longer-than-expected to close. On this
 news, the Company's stock had declined almost 15%, or \$2.31 per share, to close on May 15,
 2018 at \$13.16 per share.

1 52. In fact, Defendant Nacht explained that when the Company was planning its
2 guidance for the year that what they were already “finding is these enterprise deals are taking
3 longer.” As Defendant Nacht further explained:

4 We’ve had a number of opportunities, for example, where companies have come to
5 us with several cabinets or several hundred cabinets they would like to move in, but
6 there’s a larger opportunity there to talk to them about fully utilizing a hybrid
7 cloud, fully utilizing what our data centers can offer. And these take significantly
8 long – longer to close because we’re no longer talking about 100 cabinets or 200
9 cabinets, we’re talking about potential of thousands of cabinets. I think your
10 hypothesis that these enterprise deals are smaller than some of the cloud
11 deployments is, frankly, off base. The enterprise deals that we’re talking about,
12 some of them are absolutely as large as any of the cloud deployments out there.
13 And they are complex. They involve the companies buying hundreds of millions of
dollars of equipment, making sure their software stack is going to run
appropriately, timing when they’re going to move from their existing data centers
or shut down their existing data centers. And so it does take a logistical planning,
and we’re finding that some of these are stretching out. We are not finding that any
of them are going away, which is tremendously positive for us. So hopefully, that
helps answer it.

14 53. Following this response, the Cowen analyst asked for clarification on what was
15 different in this new enterprise strategy than what the Company was previously attempting to sell
16 to customers.⁶ In response, Mr. Morton, the Company’s President, conceded that “This is not a
17 change of course for the company, it is a refinement of our offerings and being able to express that
18 to the customer in a way that they’re beginning to, or they are, understanding and adopting those
19 items.”

21 54. Analysts did not accept the Company’s story that the lengthening of the sales cycle
22 and guidance revisions were due to the purported shift in sales strategy. As an August 14, 2018
23 Jefferies analyst report explained, “In our view, enterprise interest in a hybrid cloud architecture is
24 nothing new and expect investor skepticism around the strategic messaging.” Likewise, an August
25

26 ⁶ Specifically, Mr. Synesael asked: “Specific to this enterprise strategy, is it that you’re selling a
27 broader bundle of services, so you’re going to start reselling SDN solutions or data center
28 equipment? I’m just trying to understand what’s different in the go-forward solution set, if you
will, that you’re going to be offering as part of this hybrid offering versus what you were doing
previously?”

1 13, 2018 BTIG analyst report noted that “While we understand that Switch is addressing some of
 2 the most complex areas of the market and that these are long term architectural discussions with
 3 customers, it is unclear why the new elite hybrid offering is significantly different from their
 4 existing offerings.”

5 55. Therefore, while the Company was representing that it had not shifted its sales
 6 approach after the IPO, analysts understood and maintained that the Company’s strategy was not
 7 as presented in the IPO materials, and that the deviation had an unexpected, deleterious, and still-
 8 not-entirely explained,⁷ impact on the Company’s sales figures and guidance. Thus, an August 13,
 9 2018 analyst report written by Cowen also refuted Defendant Nacht’s contention that this “new”
 10 strategy was previously disclosed, stating that: “Adding to the confusion though in our view is that
 11 the company had not previously spoken/warned of this shift and equally important no other data
 12 center company that we are aware of is seeing similar delays.”

13 56. After closing on August 13, 2018 at \$13.98 per share, the Company’s stock tanked
 14 \$3.13 per share, or more than 22.3%, the following day to close on August 14, 2018, at \$10.85 per
 15 share, on unusually heavy volume.

16 **F. Defendants Failed to Disclose in Switch’s Registration Statement that Switch’s**
 17 **Las Vegas Facility Was Uniquely Situated and Not Scalable**

18 **1. Defendant Roy Purchased Enron’s Facility for Almost Nothing**

19 57. Since its inception Switch’s Las Vegas facility has been uniquely situated and
 20 profitable because of several non-replicable advantages.
 21
 22
 23
 24
 25

26 ⁷ An August 13, 2018 Cowen report noted that the Company’s “still weak disclosures limit
 27 transparency” and that, at “the same time, the CEO has not participated in an earnings call despite
 28 the fact the stock is down 33% since its October 2017 IPO (excluding the +20% sell-off in
 today’s aftermarket) which in our view has further reduced transparency into the company’s
 thinking.”

1 58. The Company got its start in 2000, when Defendant Roy began building a data
2 center facility in Las Vegas. In 2003, Roy merged several predecessor entities to create Switch,
3 Ltd.

4 59. Roy began constructing his center near another data facility that was being
5 developed by the Enron Corporation (“Enron”). Beginning in 1998, the “Enron Bandwidth
6 Arbitrage Center”—located near East Sahara Avenue in Las Vegas—was built over a hub of fiber
7 optic cables.
8

9 60. Enron intended to sell bandwidth to internet service providers in a manner
10 approximating a commodity market. However, in 2002—with only a week left to go before the
11 planned opening of its data facility—Enron declared bankruptcy. But Enron’s fiber optic
12 development plans had been so closely guarded that only its neighbor—Roy—recognized the
13 opportunity this presented. Enron sold its facility in an “auction” in which Roy was the only
14 bidder. Roy acquired the property for \$930,000—a steep discount from the millions of dollars that
15 Enron had invested. Because of the infrastructure built by Enron and the fiber hub on the site,
16 Switch is able to purchase bandwidth at significantly below-market rates.
17

18 **2. The Unique Advantages to Switch’s Las Vegas Location**

19 61. Switch’s superior connectivity in Nevada has been one of the Company’s primary
20 revenue drivers. The Enron facility acquired by Switch was linked up to pipes of fiber optic
21 cables serving as the national backbone for 21 information technology companies from around the
22 country. This gave Switch the ability to transfer massive amounts of data. The cables, for
23 instance, could transfer the entire contents of the Library of Congress within minutes. The
24 multitude of network providers in Nevada also granted Switch another benefit—namely, below-
25 market rates for bandwidth, which allowed Switch to resell purchased bandwidth at lower prices.
26
27
28

1 62. A 500-mile, multi-terabyte fiber optic network connects Switch’s Las Vegas
2 facility to its Tahoe/Reno facility, and provides connectivity to San Francisco and Los-Angeles.
3 Switch refers to this network as the “SUPERLOOP.” Switch bills the SUPERLOOP as
4 “allow[ing] Switch’s more than 1,000 clients to deploy a low-risk, low network latency IT
5 infrastructure for mission-critical workloads” and touts sub-ten millisecond latency between
6 California and Nevada.⁸ The SUPERLOOP also allows Switch’s Nevada campuses to be
7 “geographically redundant”—meaning data can be replicated and backed up in the case of a failure
8 at one particular site.
9

10 63. Switch’s Nevada operations also benefit from unique access to low-cost power.
11 The Company received regulatory approval in December 2016 to purchase power directly from
12 the broader national power market. This arrangement is rare—the last time a company achieved
13 this in Nevada was 2005. Switch also partnered directly with a Nevada utility to construct two
14 solar power stations intended to service its data centers.
15

16 64. Finally, Nevada is one of only four states without any corporate income tax, and of
17 those four states, Nevada is uniquely positioned in proximity to California—which has massive
18 demand for information technology services but comparatively higher taxes and more stringent
19 regulations than Nevada.
20

21 65. Outside of the Registration Statement, Switch management told investors that the
22 Company could replicate key aspects of its business as it expanded into new markets. For
23 instance, the Company stated that it had the ability to offer the same bandwidth resell services in
24 other markets that it offered in Nevada. This was inaccurate at best. Switch’s bandwidth resell
25 relationship—under which it purchases bandwidth at below-market rates and passes some of those
26
27

28 ⁸ Latency refers to time delay in transmission of data.

1 savings to its customers—was negotiated by Roy soon after taking ownership of the Enron facility
2 and reflects the significant connectivity available at that specific location.

3 **3. Switch Was Aware That It Was Not Able to Replicate the Success of Its**
4 **Las Vegas Facility at Its Other New Facilities**

5 66. Defendants were aware that it was highly unlikely that they would be able to
6 replicate the success of the Las Vegas facility at their other newer locations. Grand Rapids and
7 Atlanta have diminished connectivity opportunity compared to Las Vegas, with its existing
8 infrastructure, competitive market for bandwidth, and proximity to California.

9 67. Grand Rapids, for example, lacks established data centers. There are approximately
10 12 network connectivity providers in the area, compared to 62 in Las Vegas. And while the
11 Company billed Grand Rapids as a logical extension of Switch’s business model, other Company
12 releases suggest it was little more than a lark motivated by Roy’s fascination with fortified
13 structures:
14

15 And a friend of Rob’s called him and said, “Would you consider Grand Rapids?”
16 Rob said, “Of course. We’ll consider anything. What do you have?” He said,
17 “Well, I have some property there. I’ll send you some info.” So he sent Rob a
18 YouTube video link that his realtor had made of a 660,000 square foot concrete and
steel pyramid. Rob, of course, called him back and said, “Next time lead with, ‘I
have a pyramid.’”

19 68. Similarly, while Switch emphasized Grand Rapids’ low-disaster location and
20 compared it favorably to Nevada, the Company was unprepared for the cold climate and was
21 forced to allocate capital to respond to cold snaps.

22 69. The Company’s Atlanta facility, which was supposed to open well after the IPO,
23 faced additional substantial issues that made it non-comparable to Las Vegas. For example, there
24 was already an established competitive landscape in the Atlanta area, and overall demand was
25 lower given the regional/enterprise characteristics of the Atlanta market. Indeed, at the time of the
26 IPO, Switch had been unable to secure an anchor tenant for Atlanta.
27
28

1 70. As a result, despite the Company's significant investments in the Grand Rapids and
2 Atlanta facilities, the vast majority of Switch's revenue is attributable to Las Vegas alone. For
3 example, 94.6% of Switch's revenue for the first nine months of 2017 was attributed to Las Vegas.
4 Nevertheless, Switch represented that the Grand Rapids and Atlanta facilities were similarly
5 situated and scalable as the Las Vegas facility.

6
7 **G. The Registration Statement Failed to Disclose That \$9.4 Million in Booked
8 eBay Revenue Was for Services That Had Yet to Be Performed**

9 71. The Registration Statement contained false and/or misleading information and
10 material omissions concerning Switch's existing and projected financial performance. During the
11 Company's 2017 fiscal year, Switch reported \$9.4 million in revenue attributable to eBay for
12 colocation services that had not yet been performed and would not actually be used until the 2018
13 fiscal year. As such, Switch reported improperly inflated 2017 fiscal year revenue growth, which
14 means that the corresponding 2018 revenue growth was thus negatively impacted by the same
15 amount. Neither of these facts were disclosed in the Company's Registration Statement.

16 72. This improper inclusion of revenue resulted in a substantial overstatement of the
17 amount of growth Switch saw in the first six months of its 2017 fiscal year, as compared to the
18 first six months of its 2016 fiscal year. The Company reported in the Registration Statement that
19 recurring revenue had increased from \$148.5 million to \$177.2 million—approximately 20%.
20 This is inaccurate, however, since it improperly included the \$9.4 million in prematurely
21 recognized revenue. If that \$9.4 million had been excluded (as it should have been), then Switch
22 would have reported \$167.8 million in recurring revenue, which comes out to approximately 13%
23 growth. In the Registration Statement, Switch stated that recurring revenue was one of their "Key
24 Metrics" for evaluating their business and assessing strategies. This figure, however, was
25 overstated by more than half (approximately 53%) in the Registration Statement.
26
27
28

73. Defendants would have certainly been aware of the nature of this eBay transaction as eBay was Switch's largest client, accounting for almost 10% of Switch's business, when the deal at issue closed in 2016. As Defendant Nacht explained in April 2018, the "\$9.4 million revenue impact due to fees booked in 2017 related to a 7-year \$280 million contract closed in 2016 with a strategic customer to reserve space at one of our facilities."

74. Moreover, the failure to disclose the nature of this transaction was even more misleading due to the fact that, according to an analyst at Cowen, eBay's business with Switch was dropping off significantly from 2017 to 2018, in part because of the departure of a key executive at eBay in March of 2016. This fact was omitted from the Registration Statement.

V. DISCLOSURE OBLIGATIONS UNDER THE SECURITIES ACT

75. "The Securities Act of 1933 . . . was designed to provide investors with full disclosure of material information concerning public offerings of securities in commerce, to protect investors against fraud, and, through the imposition of specified civil liabilities, to promote ethical standards of honesty and fair dealing." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 195 (1976); *see also Randall v. Loftsgaarden*, 478 U.S. 647, 659 (1986) (The Securities Act aims "to place adequate and true information before the investor"); *Pinter v. Dahl*, 486 U.S. 622, 638 (1988) ("The primary purpose of the Securities Act is to protect investors by requiring publication of material information thought necessary to allow them to make informed investment decisions concerning public offerings of securities in interstate commerce.").

76. To effectuate this purpose, a Company's registration statement must provide a full disclosure of material information. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 381 (1983). Failure to do so gives rise to private rights of action under the Securities Act. *Id.* at 381-82 (Private rights of action were "designed to assure compliance with the disclosure provisions of the

1 Act by imposing a stringent standard of liability on the parties who play a direct role in a
 2 registered offering”); *see also* 15 U.S.C. § 77k(a).

3 **A. Section 11 Disclosure Requirements**

4 77. Section 11 prohibits materially misleading statements or omissions in registration
 5 statements filed with the SEC. *See* 15 U.S.C. § 77k. Accordingly, Section 11 gives rise to liability
 6 if “any part of [a company’s] registration statement, when such part became effective, contained
 7 an untrue statement of a material fact or omitted to state a material fact required to be stated
 8 therein or necessary to make the statements therein not misleading.” 15 U.S.C. § 77k(a). Section
 9 11 provides for a cause of action by the purchaser of a registered security against certain
 10 statutorily enumerated parties, including: “(1) every person who signed the registration statement;
 11 (2) every person who was a director . . . at the time of the filing of . . . the registration statement
 12 with respect to which his liability is asserted; (3) every person who, with his consent, is named in
 13 the registration as being or about to become a director [;]” (4) “any person . . . who has with his
 14 consent been named as having prepared or certified any part of the registration statement[;]” and
 15 (5) “every underwriter with respect to such security.” 15 U.S.C. § 77k(a)(1)-(5).
 16
 17

18 **B. Disclosure Requirements Under Regulation S-K**

19 **1. Item 303 Disclosure Requirements**

20 78. Item 303 imposes an affirmative duty on issuers to disclose “known trends or any
 21 known demands, commitments, events or uncertainties that will result in or that are reasonably
 22 likely to result in the registrant’s liquidity increasing or decreasing in a material way.” *S.E.C.*
 23 *Release No. 6835*, 1989 WL 1092885, at *4; *see also* 17 C.F.R. § 229.303(a)(3). “Disclosure of
 24 known trends or uncertainties that the registrant reasonably expects will have a material impact on
 25 net sales, revenues, or income from continuing operations is also required. *Id.*
 26

27 79. Pursuant to Item 303(a), for a fiscal year, a registrant thus has an affirmative duty
 28 to:

1 i. Describe any *unusual or infrequent events or transactions* or any
2 significant economic changes that materially affected the amount of reported
3 income from continuing operations and, in each case, indicate the extent to which
4 the income was so affected.

5 ii. Describe any known trends or uncertainties that have had or that
6 the registrant reasonably expects will have a material favorable or unfavorable
7 impact on net sales or revenues or income from continuing operations. If the
8 registrant knows of events that will cause a material change in the relationship
9 between costs and revenues (such as known future increases in costs of labor or
10 materials or price increases or inventory adjustments), the change in the
11 relationship shall be disclosed.

12 17 C.F.R. § 229.303(a)(3)(i)-(ii) (emphasis added); *see also S.E.C. Release No. 6835*, 1989 WL
13 1092885, at *8 (May 18, 1989) (“Other non-recurring items should be discussed as unusual or
14 infrequent events or transactions that materially affected the amount of reported income from
15 continuing operations.”) (citation and quotation omitted).

16 80. Thus, even a one-time event, if “reasonably expect[ed]” to have a material impact
17 of results, must be disclosed. Examples of such *required* disclosures include: “[a] reduction in the
18 registrant’s product prices; erosion in the r[e]gistrant’s market share; changes in insurance
19 coverage; or the likely non-renewal of a material contract.” *S.E.C. Release No. 6835*, 1989 WL
20 1092885, at *4 (May 18, 1989).

21 81. Accordingly, as the SEC has repeatedly emphasized, the “specific provisions in
22 Item 303 [as set forth above] require disclosure of forward-looking information.” *See Mgmt’s*
23 *Discussion and Analysis of Fin. Condition and Results of Operation*, *S.E.C. Release No. 6835*,
24 1989 WL 1092885, at *3 (May 18, 1989). Indeed, the SEC has stated that disclosure requirements
25 under Item 303 are “intended to give the investor an opportunity to look at the company through
26 the eyes of management by providing both a short and long-term analysis of the business of the
27 company” and “a historical and prospective analysis of the registrant’s financial condition . . . with
28 particular emphasis on the registrant’s prospects for the future.” *Id.* at *3, *17. Thus, “material
forward-looking information regarding known material trends and uncertainties is required to be

disclosed as part of the required discussion of those matters and the analysis of their effects.” *See Comm’n Guidance Regarding Mgmt’s Discussion and Analysis of Fin. Condition and Results of Operations*, S.E.C. Release No. 8350, 2003 WL 22996757, at *11 (December 19, 2003).

2. Item 503 Disclosure Requirements

82. Item 503 is intended “to provide investors with a clear and concise summary of the material risks to an investment in the issuer’s securities.” *Sec. Offering Reform*, S.E.C. Release No. 8501, 2004 WL 2610458, at *86 (Nov. 3, 2004). Accordingly, Item 503 requires that offering documents “provide under the caption ‘Risk Factors’ a discussion of the most significant factors that make the offering speculative or risky.” 17 CFR § 229.503(c). The discussion of risk factors:

must be specific to the particular company and its operations, and should explain how the risk affects the company and/or the securities being offered. Generic or boilerplate discussions do not tell the investors how the risks may affect their investment.

Statement of the Comm’n Regarding Disclosure of Year 2000 Issues and Consequences by Pub. Cos., Inv. Advisers, Inv. Cos., & Mun. Sec. Issuers, 1998 WL 425894, at *14 (July 29, 1998).

C. Defendants Violated Their Disclosure Obligations in the Registration Statement

83. Defendants violated their disclosure obligations in the Registration Statement because they failed to disclose that: (a) prior to the IPO, the Company had implemented a new sales strategy that focused on selling hybrid cloud solutions in a manner that presented a significant risk of lengthening the Company’s sales cycles due to the increased complication and necessary engineering needed for these more holistic contracts; (b) it was highly unlikely that they would be able replicate the success of the Las Vegas facility at their other new locations due to unique characteristics of the Las Vegas facility and marketplace; (c) Switch’s revenue figures were inflated by the inclusion of \$9.4 million in revenue for services that would not be used by its client, eBay, until the next fiscal year; and (d) as a result, the Company’s 2018 revenue would be likewise impacted by approximately \$9.4 million. Their failure to disclose these material facts and

1 risks violated Section 11 and Item 503. Additionally, Defendants' failure to disclose Switch's
 2 transition away from its sales strategy into one focused on selling hybrid cloud solutions also
 3 violated Item 303 given that Switch was actively engaged in a business strategy that it reasonably
 4 expected to have a material, unfavorable impact on revenues or income from continuing
 5 operations. Likewise, Defendants failure to disclose that the Company's 2018 revenue would be
 6 adversely impacted by approximately \$9.4 million violated Item 303.

8 **VI. MATERIALLY FALSE AND/OR MISLEADING STATEMENTS AND**
 9 **OMISSIONS IN THE REGISTRATION STATEMENT**

10 84. Switch sold 35,937,500 shares of its Class A common stock in the IPO pursuant to
 11 the Registration Statement. The Registration Statement contained untrue statements of material
 12 facts and omitted to state other facts necessary to make the statements not misleading under the
 13 circumstances in which they were made.

14 **A. Materially False and/or Misleading Statements and Omissions Regarding the**
 15 **Undisclosed Shift in Switch's Sales Strategy**

16 85. The Registration Statement explained in a section entitled "Industry Limitations"
 17 that:

18 Given the limitations of both the public cloud and the enterprise-built facilities, we expect
 19 enterprises to increasingly deploy IT equipment across hybrid cloud and colocation
 20 environments, with mission critical data stored at highly resilient and secure colocation
 21 facilities.

22 86. This statement identified in Paragraph 85 above, which was also made elsewhere in
 23 the Registration Statement, was materially false and misleading when made because, as explained
 24 in Section IV.E, *supra*, it failed to disclose that, prior to the IPO, the Company had already
 25 implemented a new sales strategy that focused on selling hybrid cloud solutions to attempt to meet
 26 this purposed need by enterprises.

27 87. The Registration Statement contained numerous statements regarding the fact that a
 28 risk of Switch's business was that the Company could have long selling and implementation

1 cycles for its services. For example, the Registration Statement disclosed that “we face risks
2 associated with having a long selling and implementation cycle for our services that requires us to
3 make significant time and resource commitments prior to recognizing revenue for those services.”

4 88. Likewise, in the section of the Registration Statement entitled “Risks Related to
5 Our Business,” the Company disclosed:

6
7 **We face risks associated with having a long selling and implementation cycle**
8 **for our services that requires us to make significant time and resource**
9 **commitments prior to recognizing revenue for those services.**

10 We often have a long selling cycle for our largest transactions, which can range
11 from a few months to up to a year or more. This can require our customers and us
12 to invest significant capital, human resources and time prior to receiving any
13 revenue. A customer’s decision to utilize our colocation services or our other
14 services often involves time-consuming contract negotiations and substantial due
15 diligence on the part of the customer regarding the adequacy of our infrastructure
16 and attractiveness of our resources and services. Furthermore, we may expend
17 significant time and resources in pursuing a particular sale or customer, and we do
18 not recognize revenue for our services until such time as the services are provided
19 under the terms of the applicable contract. Our efforts in pursuing a particular sale
20 or customer may not be successful, and we may not always have sufficient capital
21 on hand to satisfy our working capital needs between the date on which we sign an
22 agreement with a new customer and when we first receive revenue for services
23 delivered to the customer. If our efforts in pursuing sales and customers are
24 unsuccessful, or our cash on hand is insufficient to cover our working capital needs
25 over the course of our long selling cycle, our financial condition could be
26 negatively affected.

27 89. Additionally, another risk warning explained that “[o]ur sales cycle could also be
28 lengthened if customers reduce spending on, or delay decision-making with respect to, our
services, which could adversely affect our revenue growth and our ability to recognize revenue.”

90. The statements and risk factors identified in Paragraphs 87-89 were themselves
materially false and misleading when made because, as explained in Section IV.E, *supra*, they
failed to disclose that Switch had already implemented a new sales strategy that focused on selling
hybrid cloud solutions in a manner that presented a significant risk of lengthening the Company’s
sales cycles due to the increased complication and necessary engineering needed for these more

1 holistic contracts. Nowhere in the Registration Statement did Defendants disclose that there were
 2 any additional sale cycle risks attributable to the new sales strategy, which was a material risk
 3 known to Defendants at the time of the IPO.

4 **B. Materially False and/or Misleading Statements and Omissions Regarding the**
 5 **Company's Ability to Replicate the Success of Its Las Vegas Facility at Its**
 6 **Other New Facilities**

7 91. While Switch was aware that it was unable to replicate the success of its Las Vegas
 8 facility at its other locations, the Registration Statement failed to disclose this fact. Instead,
 9 Switch misled investors by claiming that all of its facilities had the same characteristics that had
 10 made its Las Vegas facility so successful without disclosing the substantial differences between
 11 the Las Vegas facility and the others. *See* Section IV. F, *supra*.

12 92. For example, in a section entitled "Our Growth Strategy," the Registration Stated:

13 **Expand into New Geographies in the United States.** We intend to continue to
 14 evaluate geographic expansion opportunities for our data center facilities, focusing
 15 on areas within the United States with limited or no natural disaster risks, favorable
 16 business and tax climates, close proximity to major cities, robust
 17 telecommunications networks, and significant customer demand. For example, we
 18 recently secured land for The Keep Campus to expand geographically into the
 19 southeast and mid-Atlantic United States. We believe this approach, combined with
 20 our ability to deploy capital efficiently through our modular design, reduces the
 21 risks associated with our geographic expansion and enhances the strategic value of
 22 our new locations.

23 93. The Registration Statement also touted the similarities between its facilities:

24 The Core Campus in Las Vegas, Nevada; The Citadel Campus near Reno, Nevada;
 25 and The Pyramid Campus in Grand Rapids, Michigan. In addition, we recently
 26 purchased land to develop a fourth Prime, The Keep Campus, in Atlanta, Georgia.
 27 ***Our Primes are strategically located in geographies that combine a low risk of***
natural disaster, favorable tax policies for customers deploying computing
infrastructure and low latency connectivity to major metropolitan markets, such
as Los Angeles, San Francisco, Silicon Valley, Chicago, New York, Northern
Virginia and Miami. As a result, customers in these metropolitan markets can
access our advanced colocation facilities while reducing exposure to the higher
taxes, higher cost of power and higher risk of natural disaster that might be
prevalent in other markets.

28 * * *

1 *We carefully chose the locations of our U.S. campuses based on characteristics*
 2 *that we believed would help drive resiliency, performance and cost efficiencies*
 3 *for our customers. Our Prime campus locations are located in areas with low*
 4 *natural disaster risk.* For example, the State of Nevada boasts the lowest natural
 5 *disaster rating in the Western United States. Additionally, each of these locations*
 6 *offers favorable tax and economic development policies that provide zero or low-*
 7 *tax environments for our customers to deploy IT equipment. While all of our*
 8 *locations offer a lower-cost source of 100% renewable power, there are*
 9 *additional efficiency advantages.* For example, the Nevada climate is characterized
 10 by low humidity and relatively stable temperatures for most of the year. This
 11 improves cooling efficiencies and reduces power consumption. We own most of
 12 our facilities, and where the land and shell are not owned, we hold long-term leases
 13 on those assets. [Emphasis added.]

14 94. Additionally, the Registration Statement claims that “[a]s our platform and
 15 customer base expands, we continue to realize growing efficiencies of scale, which allows us to
 16 provide higher value services to our customers.” Moreover, the Registration Statement touts that
 17 “[e]ach of our hyperscale PRIME retail data centers are masterfully managed and maintained to
 18 ensure extraordinary client service.”

19 95. All of the discussion in the Registration Statement regarding the similarities
 20 between all of the facilitates, the Company’s efficiencies of scale, and similarities between the
 21 management and structure of each facility give the false impression that the Company’s non-Las
 22 Vegas facilities would be as profitable as the Las Vegas facility actually was. Therefore, the
 23 statements identified in Paragraphs 92-94 above, were materially false and misleading when made
 24 because, as explained in Section IV. F, *supra*, they failed to disclose that the profitability of the
 25 Las Vegas facility was due to unique circumstances that were not available to the Company’s
 26 other facilities.

27 **C. Materially False and/or Misleading Statements and Omissions Regarding the**
 28 **Company’s \$9.4 Million in Booked eBay Revenue That Was for Services That**
 Had Yet to Be Performed

96. The Registration Statement represented that:

[Switch] calculate[s] recurring revenue as contractual revenue under signed
 contracts calculated in accordance with GAAP for the applicable period. Recurring
 revenue does not include any installation or other one-time revenue, which would

1 be classified as non-recurring revenue. Management uses recurring revenue as a
2 supplemental performance measure because it provides a useful measure of
3 increases in contractual revenue from our customers and provides a baseline
revenue measure on which to plan expenses.

4 97. The Registration Statement further explained that:

5 Revenue from recurring revenue streams is generally billed monthly and
6 recognized ratably over the period to which the service relates.

7 98. The statements identified in Paragraphs 96-97 above, were materially false and
8 misleading when made because, as explained in Section IV.G, *supra*, they failed to disclose that
9 Switch was not recognizing revenue in the applicable period for which services relate. As
10 explained above, the Company had reported \$9.4 million in revenue (for customer eBay) for
11 colocation services that had not yet been performed and would not actually be used until the 2018
12 fiscal year

13 99. Additionally, the Registration Statement repeatedly stated that the Company's
14 recurring revenue for the six months that ended on June 30, 2017 was \$177,213,000. This
15 statement was materially false and misleading because the Company was improperly including the
16 \$9.4 million in eBay revenue, which overstated the Company's recurring revenue.

17 100. Moreover, the Registration Statement touted in a section entitled "Quarterly Trends
18 in Revenue" that Switch's "quarterly revenue increased in each period presented primarily due to
19 an increase in the sale of our services as a result of the construction and expansion of our data
20 centers, increasing brand awareness and the success of our sales efforts with existing customers
21 and new customers." This statement was materially false and misleading because the Company's
22 revenue would not have increased each quarter if not for the improper inclusion of the \$9.4 million
23 in revenue.

24 101. According to the Registration Statement, the Company monitors recurring revenue
25 as a key metric to "help us evaluate our business, identify trends affecting our business, formulate
26
27
28

1 business plans and make strategic decisions.” The Registration Statement, however, failed to
2 disclose a known trend affecting its business related to this purported key metric.

3 **VII. CLASS ACTION ALLEGATIONS**

4 102. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
5 Procedure 23(a) and (b)(3) on behalf of the Class, consisting of all individuals and entities that
6 purchased or acquired Switch Class A common stock pursuant and/or traceable to the Company’s
7 false and misleading IPO Registration Statement, seeking remedies under Sections 11 and 15 of
8 the Securities Act. Excluded from the Class are Defendants, the officers and directors of the
9 Company (at all relevant times), members of their immediate families and their legal
10 representatives, heirs, successors or assigns, and any entity in which Defendants have or had a
11 controlling interest.
12

13 103. While the exact number of Class members is unknown to Plaintiff at this time and
14 can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or
15 thousands of members in the proposed Class. Millions of Switch shares were issued in the IPO.
16 Record owners and other members of the Class may be identified from records maintained by
17 Switch or its transfer agent and may be notified of the pendency of this action by mail, using the
18 form of notice similar to that customarily used in securities class actions.
19

20 104. Plaintiff’s claims are typical of the claims of the members of the Class as all
21 members of the Class are similarly affected by Defendants’ wrongful conduct in violation of
22 federal law that is complained of herein.
23

24 105. Plaintiff will fairly and adequately protect the interests of the members of the Class
25 and has retained counsel competent and experienced in class action and securities litigation.

26 106. Common questions of law and fact exist as to all members of the Class and
27 predominate over any questions solely affecting individual members of the Class. Among the
28

1 questions of law and fact common to the Class are:

- 2 • whether the Registration Statement contained any material
- 3 misrepresentations or omissions;
- 4 • whether the Individual Defendants have a viable “due diligence” defense to
- 5 the strict liability imposed by Sections 11 of the Securities Act;
- 6 • whether Defendants can establish negative causation as a defense to or as a
- 7 reduction of the strict liability otherwise imposed by Sections 11 of the
- 8 Securities Act;
- 9 • whether the Individual Defendants are control persons of Switch for
- 10 purposes of Section 15 of the Securities Act;
- 11 • whether the federal securities laws were violated by Defendants’ acts as
- 12 alleged herein; and
- 13 • to what extent members of the Class have sustained damages and the proper
- 14 measure of those damages.

15 107. A class action is superior to all other available methods for the fair and efficient
 16 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
 17 damages suffered by individual Class members may be relatively small, the expense and burden of
 18 individual litigation makes it impossible for members of the Class to individually redress the
 19 wrongs complained of herein. Moreover, there will be no difficulty in the management of this
 20 action as a class action.

21 **VIII. INAPPLICABILITY OF THE STATUTORY SAFE HARBOR**

22 108. Defendants are liable for any false and misleading forward-looking statements
 23 issued in connection with the IPO. The safe harbor provision of § 27A of the Securities Act, 15
 24 U.S.C. § 77z-2(b)(2)(D), specifically excludes those statements “made in connection with the
 25 initial public offering,” which includes all of the false and misleading statements made in
 26 connection with the IPO alleged herein.

1 **IX. CLAIMS**

2 **FIRST CLAIM**
3 **Violations of Section 11 of the Securities Act**
4 **Against All Defendants**

5 109. Plaintiff repeats and re-alleges each allegation contained above as if fully set forth
6 herein. This claim is based solely on strict liability and negligence, and expressly disclaims any
7 allegation of fraud or intentional misconduct.

8 110. This claim is asserted against all Defendants and is based on Section 11 of the
9 Securities Act. The Individual and Officer Defendants were directors and/or officers of Switch,
10 and signed and/or authorized the signing of the Registration Statement in connection with the IPO.
11 The Underwriter Defendants served as underwriters in the IPO.

12 111. The Registration Statement contained untrue statements of material fact and
13 omitted material facts necessary to render those statements not misleading.

14 112. Plaintiff and members of the Class acquired shares pursuant and/or traceable to the
15 Registration Statement.

16 113. At the time Plaintiff and members of the Class obtained their shares, they did so
17 without knowledge of the true facts concerning the misstatements or omissions alleged herein.

18 114. Defendant Switch is strictly liable to Plaintiff and all other persons who purchased
19 or otherwise acquired shares sold pursuant to the Registration Statement.

20 115. Defendants had a duty to make a reasonable and diligent investigation of the
21 truthfulness and accuracy of the statements contained in the Registration Statement. Each had a
22 duty to ensure that such statements were true and accurate and that there were no omissions of
23 material fact that would make the statements in the Registration Statement inaccurate. Because
24 Defendants failed to make a reasonable and diligent investigation of the truthfulness and accuracy
25 of the statements contained in the Registration Statement, the Registration Statement contained
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27
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1 misrepresentations and/or omissions of material fact. As such, Defendants are strictly liable to
2 Plaintiff and the Class.

3 116. Plaintiff and the members of the Class have sustained damages. The value of their
4 shares has declined substantially, subsequent to, and due to, Defendants' Securities Act violations.

5 117. Because of the foregoing, Plaintiff and the members of the Class are entitled to
6 damages under Section 11 of the Securities Act.
7

8 **SECOND CLAIM**
9 **Violations of Section 15 of the Securities Act**
10 **Against the Officer and Director Defendants**

11 118. Plaintiff repeats and re-alleges each allegation set forth contained above as if fully
12 set forth herein. This claim is based solely on strict liability and negligence, and expressly
13 disclaims any allegation of fraud or intentional misconduct.

14 119. This claim is asserted against the Officer and Director Defendants and is based on
15 Section 15 of the Securities Act.

16 120. The allegations alleged above, and incorporated into this claim, demonstrate a
17 primary violation of Section 11 of the Securities Act.

18 121. The Officer and Director Defendants, due to their control, ownership, offices,
19 directorship, and specific acts were, at the time of the wrongs alleged herein and as set forth
20 herein, controlling persons of Switch within the meaning of Section 15 of the Securities Act. The
21 Officer and Director Defendants had the power, influence, and knowledge—and exercised the
22 same—to cause Switch to engage in the acts described herein.
23

24 122. The Officer and Director Defendants, at all relevant times, participated in the
25 operation and management of Switch, and conducted and participated, directly and indirectly, in
26 the conduct of Switch's business affairs. The Officer and Director Defendants were under a duty
27 to disseminate accurate and truthful information with respect to Switch's financial condition and
28

1 prospects. Because of their positions of control and authority as officers and directors of Switch,
2 the Individual Defendants were able to, and did, control the contents of the Registration Statement
3 (including the IPO Prospectus), which contained materially untrue and/or misleading statements
4 and/or omitted to state material facts required to be stated therein.

5
6 123. Because of their conduct, the Officer and Director Defendants are liable under
7 Section 15 of the Securities Act to Plaintiff and the members of the Class who purchased or
8 acquired shares pursuant to the Registration Statement. As a direct and proximate result of the
9 Officer and Director Defendants' wrongdoing, Plaintiff and the other members of the Class
10 suffered damages in connection with their purchase and acquisition of shares pursuant to the
11 Registration Statement.

12 **X. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

14 (a) A determination that this action is a proper class action under Rule 23 of the
15 Federal Rules of Civil Procedure;

16 (b) An award of compensatory damages in favor of Plaintiff and the other Class
17 members against all Defendants, jointly and severally, for all damages sustained due to
18 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

19 (c) An award to Plaintiff and the Class of their reasonable costs and expenses incurred
20 in this action, including counsel fees and expert fees;

21 (d) Awarding extraordinary, equitable, and/or injunctive relief as permitted by law; and

22 (e) Such other and further relief as the Court may deem just and proper.

23 **XI. JURY TRIAL DEMANDED**

24 Plaintiff hereby demands a trial by jury.

Respectfully submitted,

DATED: October 12, 2018

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CERTIFICATE OF SERVICE

I, Robert V. Prongay, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on October 12, 2018.

Dated: October 12, 2018

/s/ Robert V. Prongay

Robert V. Prongay

Mailing Information for a Case 2:18-cv-01471-JCM-VCF Cai v. Switch, Inc. et al

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